

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
W.R. GRACE & CO., <i>et al.</i> ,)	Case No. 01-01139 (JKF)
)	Jointly Administered
Debtors.)	Chapter 11

NOTICE OF MOTION

To: All parties listed in the attached certificate of service

Roberta J. Prete has filed the attached Motion to Lift Automatic Stay and/or Obtain Relief from Preliminary Injunction.

Your are required to file a response to the attached motion on or before **September 17, 2007**.

At the same time, you must also serve a copy of the response upon movant's attorneys: David L. Finger, Finger & Slanina, LLC, One Commerce Center, 1201 Orange St., Suite 725, Wilmington, DE 19801-1155.

A HEARING ON THE MOTION WILL BE HELD on **Monday, September 24, 2007 at 2:00 p.m.**

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

/s/ David L. Finger
David L. Finger (DE Bar ID #2556)
Finger & Slanina, LLC
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE 19801-1155
(302) 884-6766
Attorney for movant Robert J. Prete

Dated: August 27, 2007

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
W.R. GRACE & CO., <i>et al.</i> ,)	Case No. 01-01139 (JKF)
)	Jointly Administered
Debtors.)	Chapter 11

**MOTION TO LIFT AUTOMATIC STAY AND/OR
OBTAIN RELIEF FROM PRELIMINARY INJUNCTION**

Roberta J. Prete hereby moves, pursuant to 11 U.S.C. §362(d), for an Order in the form hereto lifting the automatic stay in the above-captioned case, and/or for relief from a preliminary injunction, permitting her to proceed in a personal injury action in Florida, with any recovery limited to the extent of insurance coverage. In support of this motion, Ms. Prete states as follows:

1. In 1999, Ms. Prete (along with co-plaintiff Frank Falco), filed suit against debtor and others in the Circuit Court for Pinella County, Florida, Civil Action No. 99-1178-CI-20, claiming personal injuries arising from a collision with a truck owned by debtor. A copy of the Complaint is appended hereto as Exhibit A.

2. On January 6, 2002, defendant Thomas J. Mommaerts, driver of the truck in question, filed a Motion to Stay Proceedings, claiming that the action should be stayed by virtue of a preliminary injunction entered by this Court on January 23, 2002. (Exhibit B hereto).

3. On July 11, 2002, the Florida court entered a stay of proceedings, based on said preliminary injunction. (Exhibit C hereto).

4. Although Ms. Prete does not understand the preliminary injunction to cover her claim (as it does not relate to asbestos or fraudulent transfer claims), nonetheless the Florida court has ruled, and so Ms. Prete must obtain relief from this Court.

5. “Although there is no rigid test for determining whether cause exists to grant relief from stay, courts generally consider three factors: (1) the prejudice suffered by the debtor and debtor's estate if the stay is lifted to allow the continuation of a civil law suit; (2) the balancing of hardship between the parties; and (3) the probable success on the merits if the stay is lifted.” *In re Peregrine Systems, Inc.*, 314 B.R. 31, 46-47 (Bankr. D. Del. 2004), *aff'd in part, rev'd in part on other grounds*, 2005 WL 2401955 (D. Del. Sept. 29, 2005).

6. Ms. Prete seeks to proceed with her personal injury claim, with any recovery limited solely to the proceeds of any applicable insurance policy or policies. As such, there is no legitimate claim that allowing the Florida action to proceed will diminish the property of the estate, and therefore, no prejudice to the estate.

7. Similarly, that the estate may have to incur some defense costs does not constitute prejudice to the estate. *In re Harris*, 85 B.R. 858, 860 (Bankr. D. Colo. 1988).

8. The bankruptcy case has been proceeding since 2001. Ms. Prete's lawsuit has been pending since 1999. The harm to debtor, a significant corporation, is minuscule compared to the harm to Ms. Prete.

WHEREFORE, for the foregoing reasons, movant Robert J. Prete respectfully requests that this Court enter an Order in the form hereto, granting relief from the Court's preliminary injunction and the automatic stay provisions of 11 U.S.C. §362, limited to recovery from applicable insurance policies.

Date: August 27, 2007

Respectfully submitted,

/s/ David L. Finger

David L. Finger (DE Bar ID #2556)

Finger & Slanina, LLC

One Commerce Center

1201 Orange Street, Suite 725

Wilmington, DE 19801-1155

(302) 884-6766

Attorney for movant Roberta J. Prete

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
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ORDER

WHEREAS, Robert J. Prete filed a lawsuit in 1999 against debtor W.R. Grace & Co. And others in the Circuit Court for Pinella County, Florida, seeking compensation for personal injuries (the "Florida Action"), with recovery to be limited to the proceeds of any applicable insurance policies; and

WHEREAS, on July 11, 2002, the Judge in the Florida Action stayed all proceedings based on an Order of this Court dated June 22, 2002, entering a modified preliminary injunction against proceeding with asbestos- related and fraudulent transfer claims against the Debtor and affiliated entities; and

WHEREAS, this Court has determined that allowing the Florida Action to proceed will not do violence to the Modified Preliminary Injunction, will not cause prejudice or substantial harm to the estate of Debtor, and that the balance of hardships tips in favor of allowing the Florida Action to proceed.

Now, therefore, on this _____ day of _____, 2007, IT IS
HEREBY ORDERED THAT:

1. The Motion of Roberta J. Prete to Lift Automatic Stay and/or Obtain Relief from Preliminary Injunction is GRANTED.
2. Ms. Prete may prosecute her claim in the Florida Action, with any recovery limited to proceeds from any applicable insurance policies.

Fitzgerald, J.

CERTIFICATE OF SERVICE

I, David L. Finger, hereby certify that on this 27th day of August, 2007, I caused the foregoing Notice of Motion and Motion to Lift Automatic Stay and/or Obtain Relief from Preliminary Injunction to be filed electronically via CM/ECF, which automatically sends electronic notice of same to the foregoing counsel of record:

For Debtors:

Laura Davis Jones, Esq.
James E. O'Neill, Esq..
Pachulski Stang Ziehl Young & Jones
919 N. Market St., 7th floor
Wilmington, DE 19801

For the Committee of Unsecured Creditors:

Michael R. Lastowski, Esq.
Duane Morris LLP
100 N. Market St., Suite 1200
Wilmington, DE 19801

For the Official Committee of Equity Holders:

Teresa K.D. Currier, Esq.
Buchanan Ingersoll & Rooney, PC
1000 West Street, Suite 1410
Wilmington, DE 19801

For U.S. Trustee:

David Klauder, Esq.
Office of the United States Trustee
844 King Street, Room 2311
Wilmington, DE 19801

as well as all parties registered to receive notice via CM/ECF.

/s/ David L. Finger

David L. Finger (DE Bar ID #2556)
Finger & Slanina, LLC
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE 19801-1155
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